

## Office of the Secretary of Defense

## § 287.4

(6) *Documents that disclose the Government's negotiating position.* Documents that would disclose the government's negotiating position (such as pre-negotiation business clearances and positions and government cost estimates) or would adversely impact the government negotiating strategy shall not be released.

(7) *Drafts and working papers.* Drafts and working papers that would otherwise be releasable under paragraph 286h.3(a) shall not be released where their release would inhibit the development of agency positions, jeopardize the free exchange of information that is part of the deliberative process, or compromise the decision-making process.

(c) *Freedom of Information Act.* Where a request for information, the release of which is restricted under paragraph 286h.3(b) is made under the Freedom of Information Act, the request shall be forwarded to the appropriate official for disposition in accordance with DoD 5400.7-R.<sup>4</sup> Requests for contractor bid or proposal information pursuant to the Freedom of Information Act shall be subject to subparagraph 5-207 a. of DoD 5400.7-R, which requires notice to a non-United States Government source of a record.

### § 286h.4 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall be responsible for establishing uniform policies and procedures for the release of acquisition-related information.

(b) The Under Secretary of Defense (Policy), Assistant Secretary of Defense (Program Analysis and Evaluation) and Comptroller, DoD are responsible for adjudicating requests for access to Planning, Programming and Budgeting information pertaining to their respective phases of the PPB system.

(c) The Head of each DoD Component shall assure that procedures for the release of acquisition-related information are consistent with the policy contained in this Directive and shall not impose any additional restrictions on release of such information. These procedures shall specifically identify the

individuals authorized to release and transmit acquisition-related information.

## PART 287—DEFENSE INFORMATION SYSTEMS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

### Sec.

- 287.1 Purpose.
- 287.2 Applicability.
- 287.3 Authority.
- 287.4 Duties of the FOIA Officer.
- 287.5 Responsibilities.
- 287.6 Duties of the DITCO and the DTIC FOIA Officers.
- 287.7 Fees.
- 287.8 Appeal rights.
- 287.9 Reports.
- 287.10 Questions.
- 287.11 "For Official Use Only" Records.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 64 FR 67166, Dec. 1, 1999, unless otherwise noted.

### § 287.1 Purpose.

This part assigns responsibilities for the Freedom of Information Act (FOIA) Program for DISA.

### § 287.2 Applicability.

This part applies to DISA and the Office of the Manager, National Communications System (OMNCS).

### § 287.3 Authority.

This part is published in accordance with (IAW) the authority contained in 32 CFR part 286. It supplements 32 CFR part 286 to accommodate specific requirements of the DISA FOIA Program. However, 32 CFR part 286 takes precedence and shall be used for all issues not covered by this part.

### § 287.4 Duties of the FOIA officer.

The DISA FOIA Officer, located at DISA Headquarters, 701 S. Courthouse Road, Arlington, Virginia, is vested with the authority, within DISA, to release documentation for all requests of Agency records received by DISA directorates and field activities. The DISA FOIA Officer will:

(a) Make the materials described in 32 CFR 286.7 available for public inspection and reproduction. (A current index of this material will be maintained in accordance with 32 CFR 286.8).

<sup>4</sup>See footnote 1 to § 286h.3(b)(2)(ii).

## § 287.5

## 32 CFR Ch. I (7–1–08 Edition)

(b) Establish education and training programs for all DISA employees who contribute to the DISA FOIA Program.

(c) Respond to all requests for records from private persons IAW 32 CFR part 286 whether the requests are received directly by DISA Headquarters or by DISA field activities. Coordinate proposed releases with the General Counsel in any case in which the release is, or may be, controversial. Coordinate all proposed denials with the General Counsel.

(d) Be the DISA principal point of contact for coordination with the Directorate for Freedom of Information and Security Review (DFOISR) Washington Headquarters Services, reference FOIA issues.

(e) Ensure the cooperation of DISA with DFOISR in fulfilling the responsibilities of monitoring the FOIA Program.

(f) Coordinate cases of significance with DFOISR, after coordination with the General Counsel and with the approval of the Chief of Staff, when the issues raised are unusual, precedent setting, or otherwise require special attention or guidance.

(g) Advise DFOISR prior to the denial of a request or prior to an appeal when two or more DoD components are affected by the request for a particular record or when circumstances suggest a potential public controversy.

(h) Ensure completion of the annual reporting requirement contained in 32 CFR part 286.

### § 287.5 Responsibilities

(a) *Deputy Directors, Headquarters, DISA; Commanders and Chiefs of DISA Field Activities; and the Deputy Manager, NCS.* These individuals will furnish the FOIA Officer, when requested, with DISA documentary material, which qualifies as a record IAW 32 CFR part 286, for the purpose of responding to FOIA requests.

(b) *Chief of Staff.* The Chief of Staff will, on behalf of the Director, DISA, respond to the corrective or disciplinary action recommended by the Merit Systems Protection Board for arbitrary or capricious withholding of records requested, pursuant to the Freedom of Information Act, by military members or civilian employees of

DISA. (This will be coordinated with the General Counsel.)

(c) *General Counsel.* The General Counsel or, in his or her absence, the Deputy General Counsel, is vested with the authority to deny, in whole or in part, a FOIA request received by DISA. The General Counsel will:

(1) Make the decision to deny a record in whole or in part; to deny a fee category claim; to deny a request for waiver or reduction in fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing; or to confirm that no records were located during the initial search IAW 5 U.S.C. 552, as supplemented by the guidance provided in 32 CFR part 286

(2) Inform the person denied the basis for the denial of the request and of his or her right to appeal the decision to the Director, DISA, via written correspondence.

(3) Review any appeal the public may consider adverse in nature and ensure that the basis for the determination by the Director, DISA, be in writing, state the reasons for the denial, and inform the requester of his or her right to a judicial review in the appropriate U.S. District Court.

(4) Arrange for the publication of this part in the FEDERAL REGISTER.

(d) *Chief, Legal Counsel, Defense Information Technology Contracting Organization (DITCO).* The Chief Legal Counsel, DITCO, or, in his or her absence, the Deputy Legal Counsel, DITCO, is vested with same authority and responsibilities, for DITCO, as stated in paragraph (c) of this section.

(e) *Administrator, Defense Technical Information Center (DTIC).* The Administrator, DTIC, is vested with the same authority and responsibilities, for DTIC, as stated in paragraph (c) of this section.

### § 287.6 Duties of the DITCO and the DTIC FOIA officers.

(a) *DITCO FOIA Officer.* The DITCO FOIA Officer, located at 2300 East Drive, Scott AFB, IL 62225, is vested with the authority, within DITCO, to release documentation for all requests of records received by DITCO and its field activities, as stated in § 287.4 (a), (b), and (c) and assist the DISA FOIA